



STATE OF SOUTH DAKOTA
M. MICHAEL ROUNDS, GOVERNOR

September 27, 2006

Philip N. Hogen
Chairman
National Indian Gaming Commission
1441 L Street, N.W., Suite 9100
Washington, DC 20005

VIA Fax: 202.632.7066

RE: Proposed Classification Regulations

Dear Chairman Hogen:

Thank you for the opportunity to provide written comments on the NIGC's proposed regulations to distinguish technologically-aided Class II games which tribes may play without tribal-state compacts from Class III games or devices which may be played only pursuant to the terms of such compacts. In general, I endorse the proposals in that they significantly move the regulations toward the goal of properly distinguishing Class II from Class III games and devices. Nonetheless, I have two major concerns with the proposed regulations as they were printed in the May 25, 2006, edition of the *Federal Register*.

First, there are no definable standards for testing laboratories which will submit evaluations of the devices they test. The notice in the *Federal Register* states:

The Commission believes that, as a condition of being recognized to perform these important evaluations, a testing laboratory must be required to demonstrate its integrity, independence and financial stability by providing evidence that it has been licensed in a competent jurisdiction that required a thorough background investigation as a part of the licensing process. The testing lab must also demonstrate its technical skill and capability by providing evidence that it has conducted suitable testing to standards established by other jurisdictions.

The proposed regulation provides that any tribe's gaming regulatory authority will be the entity authorizing specific games and gaming systems for use in that tribe's gaming operations. Because there are hundreds of tribal gaming regulatory authorities throughout the country, there will be no clear, definable standard for testing laboratories and testing procedures.

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I recommend the NIGC provide one set of clear, definable standards which all testing laboratories would be required to meet before the results of the laboratory would be accepted by the commission. At a minimum, these standards should require each laboratory to have sufficient in-house personnel experienced in the following areas: Mathematics; mechanical, electrical and software engineering; compliance engineering; accounting system communication engineering; and quality assurance.

In making this comment, I am not being critical of any tribe or laboratory. However, there are likely to be several groups interested in performing testing for the various tribes, and I believe it would be in everyone's best interest to have one set of definable standards or criteria that all tribal governments and the NIGC will use when evaluating laboratory testing proposals. Furthermore, all businesses or individuals who wish to perform such tests could be prepared to meet those standards before testing games or submitting proposals to tribal gaming authorities. As you know, certification of the security and integrity of gaming devices by independent testing laboratories is the norm in the industry.

My other concern with the proposed regulations is that there is no provision for a governor, or any other state official, to be notified of the types of games that a tribal gaming regulatory authority has determined to be Class II games and offered for play in the state or to be provided with copies of any testing procedures, protocol or results. Nor is there any provision for a state to challenge the determination of a testing laboratory or the decision of any tribal gaming regulatory authority regarding a Class II determination. Under the proposed regulations, only the NIGC can challenge the recommendations of a testing laboratory or the determination by a tribal gaming regulatory authority. I suggest the proposed regulations be amended to provide a requirement that the governor, or other appropriate state official, be notified of the determinations of tribal gaming authorities of the specific games which the tribe will offer for play within the state and be provided copies of the laboratory testing protocol, procedures and results. Further, states should be allowed an opportunity to challenge the determination and/or the testing procedure and an opportunity for a hearing before the commission if a state has reason to believe that the device does not conform to the requirements adopted by the NIGC as Class II games. Such challenge and hearing should be conducted within a reasonable period of time after the state receives such notification.

Thank you for the opportunity to provide the commission input on this important topic.

Sincerely,



M. Michael Rounds

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